

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Raquel Velasquez	Team: Squad #12	CCRB Case #: 201701838	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Friday, 03/03/2017 1:15 AM	Location of Incident: Saint George Ferry Terminal	Precinct: 120	18 Mo. SOL 9/3/2018	EO SOL 9/3/2018	
Date/Time CV Reported Fri, 03/03/2017 4:10 AM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Thu, 03/09/2017 11:40 AM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Stephen Machicote	30062	954084	PBSI
2. SGT Stephen Viani	01812	926257	PBSI

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POF Michelle Abraham	01124	960121	122 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Stephen Machicote	Force: Police Officer Stephen Machicote used physical force against § 87(2)(b)	
B.POM Stephen Machicote	Force: Police Officer Stephen Machicote restricted § 87(2)(b)'s breathing.	
C.SGT Stephen Viani	Force: Sergeant Stephen Viani restricted § 87(2)(b)'s breathing.	

Case Summary

On March 3, 2017, Captain Anthony Bentivegna called IAB and reported a prisoner injury. The complaint was referred to the CCRB and was received on March 9, 2017.

On March 3, 2017, at approximately 1:15 a.m., PO Stephen Machicote and PO Michelle Abraham, from Patrol Borough Staten Island's Ferry Unit, approached § 87(2)(b) who was at a Subway within the St. George Ferry Terminal in Staten Island, and instructed him to leave the terminal. PO Machicote pushed § 87(2)(b) multiple times in the chest, struck him multiple times in the face, and then brought him to the floor (**Allegation A: Force**, § 87(2)(g)). PO Machicote handcuffed § 87(2)(b) and arrested him for assault in the second degree (**Board Review 01**). Sergeant Stephen Viani, also from Patrol Borough Staten Island's Ferry Unit, arrived at the scene and verified § 87(2)(b)'s arrest. § 87(2)(b) remained lying on his stomach for approximately twenty minutes while handcuffed until he was transported to the hospital. While § 87(2)(b) lay on his stomach, Sgt. Viani placed his knee on § 87(2)(b)'s back (**Allegation B, C: Force [restricted breathing]**, § 87(2)(g)).

Video footage of this incident was obtained from surveillance cameras at the St. George Ferry Terminal in Staten Island. The video does not have audio (**Board Review 12, 13, 14, and 15**).

Findings and Recommendations

Allegation A: Force- Police Officer Stephen Machicote used physical force against § 87(2)(b)

It is undisputed that § 87(2)(b) was intoxicated and consuming alcohol at the ferry terminal. It is also undisputed that PO Machicote pushed § 87(2)(b) multiple times in the chest and punched § 87(2)(b) multiple times in the face.

§ 87(2)(b) stated that he had been at the ferry terminal for approximately one to two hours walking around and consuming four cans of "Four Lokos." During that same time frame, PO Machicote told § 87(2)(b) three to four times that he could not stay in one place and that he had to move. § 87(2)(b) complied each time. PO Machicote did not say anything else to § 87(2)(b). § 87(2)(b) then sat inside Subway and consumed one of the beer cans, and spoke to two unknown individuals inside Subway. He was not told to leave. Approximately ten minutes later, § 87(2)(b) saw PO Machicote approaching so he got up to walk away. PO Machicote asked § 87(2)(b) for the beer can and § 87(2)(b) said no. PO Machicote took the beer can away from § 87(2)(b)'s grip and poured it on the floor. § 87(2)(b) walked away. PO Machicote re-approached § 87(2)(b) put his chest up against § 87(2)(b)'s chest, and said, "Do something. What are you gonna do?" § 87(2)(b) moved back and replied, "Nothing. I'm gonna take my ticket and walk away, and get another beer." § 87(2)(b) believed that he was going to be issued a summons for the open container. PO Machicote then punched § 87(2)(b) in the left jaw with his right fist. § 87(2)(b) ducked afterwards. PO Machicote then punched § 87(2)(b) in the back right side of his head with his left fist. § 87(2)(b) placed his hands up to block further strikes. § 87(2)(b) did not recall pushing PO Machicote, but it is possible that he made contact with PO Machicote when he placed his hands up to cover himself. He did not punch PO Machicote. PO Machicote and PO Abraham then grabbed § 87(2)(b) by his arms and threw him on the floor. § 87(2)(b) landed on his chest. PO Machicote and PO Abraham handcuffed § 87(2)(b) without any struggle. § 87(2)(b) was eventually

transported via ambulance to § 87(2)(b) to treat a bloody mouth and nose, and swollen face and jaw (**Board Review 02**).

§ 87(2)(b)'s arrest photograph depicts a swollen upper lip and bloody mouth (**Board Review 03**).

§ 87(2)(b)'s medical records from § 87(2)(b) on § 87(2)(b) note that he was intoxicated and had a laceration, facial swelling, redness on the left side of his face, and a swollen upper lip. § 87(2)(b) was diagnosed with alcohol intoxication and a facial contusion (**see Privileged Documents**).

The video evidence shows PO Machicote, PO Abraham, § 87(2)(b) and a male from the Staten Island Ferry Terminal personnel. At 00:09, PO Machicote grabs § 87(2)(b)'s right bicep as he pushes him forward and § 87(2)(b) takes a few steps forward. At 00:10, PO Machicote then releases § 87(2)(b)'s right bicep causing § 87(2)(b) to stumble forward, but he does not fall to the floor. From 00:12 to 00:15, § 87(2)(b) regains his balance, looks back at PO Machicote and points at him. PO Machicote re-approaches § 87(2)(b) bumps chest to chest with him, re-grabs his right arm, and pushes him forward. § 87(2)(b) walks forward. PO Machicote touches § 87(2)(b) in the back and § 87(2)(b) turns around and looks back at PO Machicote. From 00:16 to 00:20, PO Machicote then pushes § 87(2)(b) in the chest causing § 87(2)(b) to take several steps back. § 87(2)(b) regains his balance and remains in place. PO Machicote and PO Abraham walk up to § 87(2)(b). From 00:21 to 00:27, PO Machicote pushes § 87(2)(b) in the right shoulder causing § 87(2)(b) to take a few steps forward. § 87(2)(b) circles around; PO Abraham approaches § 87(2)(b) and § 87(2)(b) stops. It appears that PO Abraham briefly speaks to § 87(2)(b). However, PO Machicote then approaches § 87(2)(b). § 87(2)(b) takes a few steps back and PO Machicote continues walking towards him. § 87(2)(b) extends his arms midway and quickly lowers them. At 00:28, PO Machicote then, using both hands, pushes § 87(2)(b)'s shoulders. At 00:29, § 87(2)(b) lifts his arms up and it appears that he makes contact with PO Machicote's arms, and then takes a step back. PO Machicote re-approaches § 87(2)(b). At 00:30, § 87(2)(b) extends both arms forward and makes contact with PO Machicote's upper chest (**Board Review 12 and 13**).



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At 00:14, PO Machicote proceeds to strike § 87(2)(b) in the face once, using his right hand. At 00:15, § 87(2)(b) lowers his head and his body, and his hands appear to cover his head as he attempts to walk away. From 00:15 to 00:21, simultaneously, PO Machicote throws approximately five consecutive punches, using his right fist, towards § 87(2)(b)'s head. Throughout the punches, § 87(2)(b) remains in the same position and PO Abraham moves towards § 87(2)(b) and PO Machicote, and attempts to interject. At 00:22, following the punches, PO Machicote grabs § 87(2)(b) from behind and pulls him to the floor. § 87(2)(b) lands on his right side. PO Abraham kneels on the floor on § 87(2)(b)'s left side.

PO Machicote kneels on the floor on § 87(2)(b)'s right side. Both officers quickly place § 87(2)(b) on his chest and appear to handcuff him within seconds (**Board Review 12 and 14**).



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PO Machicote stated that he and PO Abraham were patrolling the ferry terminal. Earlier in the night, he was not sure of the time, PO Machicote ejected § 87(2)(b) from the terminal because he was intoxicated and loud. He determined that § 87(2)(b) was intoxicated because his speech was slurred, his eyes were red, he had trouble walking, and his breath smelled of alcohol. § 87(2)(b) refused to comply with commands so PO Machicote physically escorted § 87(2)(b) out by pushing his chest a couple of times. PO Machicote and PO Abraham were standing across Subway to deter individuals from sleeping in the area. They were approached by a ferry terminal supervisor who said that he wanted § 87(2)(b) to be removed from the terminal because he was being loud and boisterous, was intoxicated, and was drinking. § 87(2)(b) was inside Subway. PO Machicote initially stated that he intended on ejecting § 87(2)(b) from the terminal. However, he later stated that he intended on issuing § 87(2)(b) a summons for trespass and public consumption of alcohol, and that he was going to issue the summonses outside of the terminal. PO Machicote and PO Abraham approached § 87(2)(b) who had a beer can in his hand and PO Machicote attempted to take it because he did not want § 87(2)(b) to use it as a weapon against him. § 87(2)(b) did not do anything that indicated that he may be hostile, but PO Machicote stated that he does not know what an intoxicated person is thinking. The beer can spilled after either PO Machicote tried to take it away or § 87(2)(b) dropped it (**Board Review 04**).

PO Machicote added that he then told § 87(2)(b) to leave and § 87(2)(b) responded, "I'm not leaving." PO Machicote repeated his command and § 87(2)(b) said no. PO Machicote then pushed § 87(2)(b) in the chest and moved him out of Subway. § 87(2)(b) said, "Don't push me," and walked towards PO Machicote. PO Machicote pushed § 87(2)(b) in the chest again because he did not want § 87(2)(b) to get close to him. § 87(2)(b) took a few steps back after the push and then re-approached PO Machicote. This occurred three to four times. PO Machicote did not attempt to handcuff § 87(2)(b) because he believed pushing him would be easier and less intrusive. During one of the times that PO Machicote pushed § 87(2)(b) and § 87(2)(b) re-approached PO Machicote, § 87(2)(b) struck PO Machicote in the chin/jaw area with a closed fist. § 87(2)(b) was subsequently considered under arrest for assault in the second degree. PO Machicote attempted to arrest § 87(2)(b) but he flailed around so PO Machicote immediately struck him in the mouth with his right fist. PO Machicote swung his fist towards § 87(2)(b)'s face several times and, although he could not estimate how many times, PO Machicote stated that he only made contact with § 87(2)(b) twice. § 87(2)(b) then stopped moving. While striking § 87(2)(b) PO Machicote told him to stop resisting and § 87(2)(b) did not respond. PO Machicote punched § 87(2)(b) instead of attempting to handcuff him because he believed § 87(2)(b) was going to fight. He struck § 87(2)(b) multiple times to stop him from resisting and to get a grip of him. PO Machicote was presented with video evidence of the incident and he identified the moment when § 87(2)(b) placed his arms up as the moment when § 87(2)(b) struck him in the face (**Board Review 13**;

at 00:30). PO Machicote was also asked to state the number of times he is seen striking § 87(2)(b) to which he stated that only two of his strikes made contact with § 87(2)(b)'s face (**Board Review 04**).

PO Machicote stated that he then took § 87(2)(b) to the floor, he did not know how, and handcuffed him. PO Abraham stood next to PO Machicote while all of this occurred. PO Machicote called for a supervisor and Sgt. Viani arrived. § 87(2)(b) had a swollen and bloody lip. PO Machicote had a swollen chin and had neck pain. Sgt. Viani requested two ambulances and both PO Machicote and § 87(2)(b) were transported and treated at § 87(2)(b). PO Machicote was out sick for the rest of the week (**Board Review 04**). In the Line of Duty Report, PO Machicote noted that while attempting to escort § 87(2)(b) who was belligerent and possibly intoxicated, PO Machicote was struck in the face with a closed fist causing pain to the neck and face while attempting to effect a lawful arrest. He noted that he had prior interactions with § 87(2)(b) (**Board Review 18**).

PO Abraham's statement was consistent to PO Machicote's with the following exceptions. During their first interaction with § 87(2)(b) the officers instructed § 87(2)(b) to leave the terminal and he complied. During their second interaction, the officers walked around the terminal when they re-encountered § 87(2)(b) by Subway. § 87(2)(b) was alone and intoxicated, and he had an open container of alcohol. The officers approached § 87(2)(b) and told him to leave. The officers did not discuss what they were going to do but PO Abraham planned to eject him from the terminal. PO Abraham did not intend on issuing § 87(2)(b) a summons. She did not recall anyone from the ferry personnel approaching them and stating that they wanted § 87(2)(b) to be removed from the terminal. § 87(2)(b) cursed and said other things that PO Abraham did not recall. PO Abraham and PO Machicote attempted to escort § 87(2)(b) out of the terminal by walking towards him, standing on his sides, moving their hands towards § 87(2)(b) gesturing him to leave, and telling him to leave. PO Abraham and PO Machicote did this for a few minutes. PO Abraham did not recall seeing PO Machicote push § 87(2)(b) in the chest. § 87(2)(b) walked backwards, towards the doors, but he flailed his arms, screamed, and cursed. PO Machicote then stated that § 87(2)(b) struck him. PO Abraham was focused on § 87(2)(b)'s hands because he was very belligerent and thought that he might hit the officers. However, PO Abraham did not see when § 87(2)(b) struck PO Machicote. PO Machicote then struck § 87(2)(b) in the face with his hand. She did not recall whether PO Machicote threw multiple hits and she did not know how many times PO Machicote struck § 87(2)(b) cursed and screamed. Both officers grabbed § 87(2)(b)'s arms, placed him on the floor without any struggle, and handcuffed him. PO Abraham did not recall if § 87(2)(b) had any injuries. PO Machicote complained of pain to his face. PO Abraham was shown a copy of the AIDED report she prepared regarding PO Machicote and she confirmed that the details were based off of what PO Machicote told her, and not from her own observations (**Board Review 05**).

The AIDED report, prepared by PO Abraham, notes that PO Machicote was struck in the left side of the face/neck/cheek causing pain and swelling. PO Machicote was seen and treated at § 87(2)(b) (**Board Review 16**).

In the Witness Statement-Injury to Member of the Department form, PO Abraham noted that she and PO Machicote encountered § 87(2)(b) who was intoxicated and with an open container. After repeatedly asking § 87(2)(b) to leave the ferry terminal, § 87(2)(b) became combative. While attempting to physically remove § 87(2)(b) from the terminal, PO Machicote stated that § 87(2)(b) struck him in the face. While attempting to take § 87(2)(b) to the ground, PO Machicote struck § 87(2)(b) in the face (**Board Review 17**).

§ 87(2)(b), § 87(2)(g)

Patrol Guide Procedure 221-02 states that an officer may apply no more than the reasonable force necessary to gain control of an arrestee (**Board Review 07**).

§ 87(2)(b), § 87(2)(g)

Allegation B: Force- Police Officer Stephen Machicote restricted § 87(2)(b)'s breathing.

Allegation C: Force- Sergeant Stephen Viani restricted § 87(2)(b)'s breathing.

§ 87(2)(b) stated that, after being handcuffed, he remained on his chest for approximately four to six minutes until the ambulance arrived. This position did not restrict his breathing, but § 87(2)(b) was uncomfortable so he attempted to turn around. § 87(2)(b) might have asked why he had to remain on his chest and an officer told him he could not turn around. During the entire time he lay on the floor, § 87(2)(b) felt something that could have been a hand or a foot pushing his head, back, and feet against the floor. § 87(2)(b) did not see the officer who did this (**Board Review 02**).

The video evidence, which is approximately twenty-six minutes long, shows that throughout that time period, § 87(2)(b) lied on his stomach and attempted to turn onto his sides several times. At approximately 14:50, § 87(2)(b) is still lying on his stomach. There are approximately six uniformed officers standing around, including PO Machicote and Sgt. Viani. § 87(2)(b) turns on his left side and Sgt. Viani, who is standing in front of § 87(2)(b) circles around and walks behind § 87(2)(b) rolls on his stomach and turns on his right shoulder. Sgt. Viani and § 87(2)(b) appear to speak with each other. At approximately 15:10, Sgt. Viani begins circling back around to § 87(2)(b)'s right side. § 87(2)(b) remains leaning on his right side so his back is towards Sgt. Viani. At approximately 15:19, Sgt. Viani extends his left foot and touches § 87(2)(b)'s back. Sgt. Viani removes his foot from § 87(2)(b)'s back, leans down, and pushes § 87(2)(b)'s left shoulder forward. However, he then removes his hands and, at approximately 15:22, Sgt. Viani leans his left knee on § 87(2)(b)'s back. At

approximately 15:27, Sgt. Viani removes his knee from § 87(2)(b)'s back and stands up (**Board Review 12 and 15**).



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PO Machicote stated that § 87(2)(b) lied on his chest after being handcuffed. He did not know long § 87(2)(b) remained in this position, but it was until he was transported to the hospital. PO Machicote did not recall § 87(2)(b) stating that he was uncomfortable lying on his chest. PO Machicote did not know if § 87(2)(b) attempted to turn over. PO Machicote did not believe that he placed a knee on § 87(2)(b)'s head, back, or feet to hold him down against the floor. He believed PO Abraham held § 87(2)(b)'s legs using her knees down when he first brought § 87(2)(b) on the floor, while he was being handcuffed, and afterwards. He did not know how long she remained in this position. He did not recall if any other officer placed a knee, hand, or foot anywhere on § 87(2)(b)'s body (**Board Review 04**).

PO Abraham stated that § 87(2)(b) remained on the floor while waiting for the ambulances. She did not recall how § 87(2)(b) was positioned or whether he remained on his stomach. PO Abraham did not recall seeing an officer place a knee, hand, or foot anywhere on § 87(2)(b)'s body or hold him against the floor. PO Abraham did not recall § 87(2)(b) stating that he was uncomfortable from lying on his stomach (**Board Review 05**).

Sgt. Viani stated that he responded to the incident location after being alerted about the arrest. Sgt. Viani was the only supervisor present. Sgt. Viani requested two ambulances. The ambulances arrived approximately five minutes later. § 87(2)(b) was in handcuffs and on the floor rolling onto his sides. § 87(2)(b) might have rolled himself onto his stomach. § 87(2)(b) stated that he was unhappy and uncomfortable. Sgt. Viani could not think of any specific protocol regarding how individuals have to be positioned after being handcuffed. Sgt. Viani did not recall placing a knee on § 87(2)(b)'s back to hold him down, and he did not recall seeing any officer doing so. Sgt. Viani was shown video footage of the incident. The video was paused at the 10:21 minute mark and it was addressed that § 87(2)(b) is seen lying on his stomach. The video resumed and was paused again at the 18:00 minute mark. It was addressed that Sgt. Viani is seen placing his knee on § 87(2)(b)'s back. Sgt. Viani explained that he started talking to § 87(2)(b) and § 87(2)(b) cursed and made threatening statements towards the officers such as, "This is bullshit. I'm gonna sue," and "the usual stuff people say." Sgt. Viani could not state the threatening statements § 87(2)(b) made, stating that § 87(2)(b) was "all over the place." Sgt. Viani approached § 87(2)(b) and told him, "This is what you're going to do. You're gonna be calm, you're gonna go, and that's it. This is the procedure. You're cuffed. That's it. You're under arrest" (**Board Review 06**).

Patrol Guide Procedure 221-02 states that, after handcuffing a person and as soon as safety permits, an officer must position the person to promote free breathing by sitting the person up or turning the person onto his side. The patrol guide also notes that an officer may apply no more than the reasonable force necessary to gain control (**Board Review 07 and Board Review 08**).

§ 87(2)(b), § 87(2)(g)

Civilian and Officer CCRB Histories

- This is § 87(2)(b)'s first CCRB complaint (**Board Review 09**).
- This is the first CCRB complaint filed against PO Machicote and he has been a member of service for five years (see officer history).
- This is the third CCRB complaint filed against Sgt. Viani and he has been a member of service for seventeen years. None of the allegations against him have been substantiated (see officer history).

Mediation, Civil and Criminal Histories

- This case was not suitable for mediation.
- § 87(2)(b) did not file a Notice of Claim regarding this incident (**Board Review 10**).
- § 87(2)(b)

Squad No.: 12

Investigator: _____
Signature Print Title & Name Date

Squad Leader: _____
Signature Print Title & Name Date

Reviewer: _____
Signature Print Title & Name Date